(04)

of 1001

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 2545 /2002

PETITIONER : Kuber Kushwaha s/o Bhikham Singh Kushwaha, aged 59 years, working as Chowkidar-cum-Farrash at Distt. Sainik Welfare Office, Durg (C.G.) R/o Fokat Para, Post Office Gali Kasaridih Distt. Durg (C.G.)

Vs.

RESPONDENTS :

1. Union of India
   Through - The Secretary
   Department of Personnel & Training
   (State Reorganization Cell)
2. Govt. of India, New Delhi.
2. State of Chhattisgarh
   Through - The Secretary
   Department of Home (Police)
   Mantralaya, DKS Bhawan, Raipur, C.G.
3. State of M.P.
   Through - The Secretary
   Dept. of Home (Police)
   Mantralaya, Bhopal (M.P.)
4. Directorate of Sainik Welfare,
   State of Chhattisgarh
   Through The Director,
   Collectorate Campus, Raipur, C.G.
5. Directorate of Sainik Welfare
   State of Madhya Pradesh
   Guru Teg Bahadur Complex, T.T.Nagar
   P.O. Box No. 362, Bhopal (M.P.)
6. Chairman/President
   State Advisory Committee

P.R. No. 23-12-02
Presented by Shri U.R. Koshaly
dt. 12.12.02

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State Reoggani**s**ation Cell
General Administration Deptt.
Mantralaya, Bhopal (M.P.)

7. District Sainik Welfare Officer,
MIG-542,Padmanabhpur Durg (C.G.)

8. District Sainik Welfare Officer,
Satna (M.P.)

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT ORDER OR/AND DIRECTIONS IN THE NATURE OF MANDAMUS, CERTIORARI OR OF ANY OTHER APPROPRIATE NATURE.

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आदेश पत्रक

मामला क्रमांक 2546 सन् 200 2

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	28/4/2003 Parties as before. Order passed, signed and dated. Since common orders have been passed, a copy of this order be placed in the record of all the connected matters and cause title of memo of petitions may be annexed along with the copy of this order in each case. A.R. (J) to do the needful. **Sd/-** **Fakhruddin** **Judge**	

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आदेश पत्रक

मामला क्रमांक WP 5 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

ORDER
(28-4-2003)

This batch of petitions has been filed by the petitioners pursuant to the creation of States under the M.P. State Reorganization Act 2000. The disputes relate to the allocation of the employees of the State Government. It is contended that under the provisions of the Act and policy framed by and or at the behest of the Central Government, options were invited. It is submitted that final allocation has been made and aggrieved by the same these petitions have been filed before this Court claiming reliefs mentioned therein.

2. Learned counsel for all the petitioners stated at the Bar that in the present batch of petitions, none of the petitioners is in judicial service or in the service of Vidhan Sabha. They all are employees of the departments other than the above said departments. It is also stated that some cases are listed at motion hearing and they are being heard analogously with

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	consent of the parties finally, as copies have been supplied and the acknowledgements have been obtained 3. Shri Murthy submitted that Central Government has filed the return in W.P. No. 2353/2002 and prayed that the same be adopted in all connected cases, which was not opposed and allowed. 4. Shri Sanjay K. Agrawal, Dy. Advocate General, submitted that State has filed detailed return in Writ Petitions No.2215/02 (Dr. R.K. Tiwari vs. State), No. 2547/02 (Bhimrao vs. Union of India) and No.2427/02 (Shiva Sharan Sharma vs. Union of India). He further submitted that the same be adopted in other cases also, which was not opposed and allowed. 5. During the course of arguments, counsel for some of the petitioners submitted that they have filed the synopsis. They may be taken/filed/tagged.	

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मामला क्रमांक ..... सन् 200 .....

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	6. Counsel for the petitioners pointed out that in some cases, their spouses are working in the Govt./Semi Government departments of one State whereas they have been allocated to another State and in that view of the matter, they pray that they should have been allocated to the same State where their spouses are working. It is submitted that reorganization of the State, in so far as they have been posted in separate State, has resulted in automatic judicial separation causing disturbance in their family life, especially parting company of children and parents. It is submitted that while deciding the allocation matter, this aspect has not been considered in proper prospective and there is need to reconsider the same. Their cases should also be considered. 7. It is contended that posting of serving spouses in the Corporation, Local bodies, Corporate offices, organizations and institutions is also a class of spouses who deserve the same consideration. They contended that they are serving in	

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मामला क्रमांक ..... सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

these departments because the Govt. jobs were not available to them. They also contended that in case they are not allocated in the same State, it may result in criminal waste of not only manpower but may also create economic crises and affect the national growth. Their cases may also be considered.

8. It is submitted that during the intervening period some persons have retired or nearing the age of retirement, say this year i.e. upto 31st October, 2003. They submit that their cases may be considered so that there is no difficulty in apportionment of retiral benefits and they may get the same at the earliest and may settle themselves in their home town. Their cases may also be considered.

9. It is further submitted by the counsel for the petitioners that besides the cases of spouses, there are other cases where final allocation needs further consideration and

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

reconsideration and categories like marriage of parties after option, mutual cases, bonafide residence, non-calling of option etc. Which have been mentioned by the petitioners in their respective petitions.

10. It is contended that there are some persons who have been married in between as their marriage was earlier settled and has taken place after the appointed day i.e. 1-11-2000. There are few cases of this category. Their cases may also be considered.

11. It is pointed out that employees have applied for mutual allocation. It is submitted that mutual allocation is possible under the provisions of scheme and the few cases of mutual allocations have been considered whereas cases of the petitioners have been rejected/not properly considered. It is further submitted that the mutual adjustment is permissible and may be considered and especially in those cases where the persons applying for mutual allocation do not disturb the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

seniority or otherwise affecting the State exchequer. It is that there are other categories of employees like change of option after marriage.

12. It is contended that certain persons have not been given place of their choice. They opted for a particular State but are given another State and under the policy they are entitled to be given the place of their choice. Their cases may be reconsider in accordance with the policy and if it is possible, they may be given the place of their choice.

13. During dictation, it is also submitted by S/Shri Manindra Shrivastava, P. Diwakar, Prashant Mishra, Rajeev Shrivastava, Awadh Tripathi, Sandeep Dubey and Smt. Hameeda Siddique that in the batch, there are some cases of them where the employees have changed their options because of the compelling circumstances mentioned therein.

14. It may be noted that many of these matters have been heard on earlier dates. However, detailed arguments were

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	advanced on 23-4-2003 but could not be concluded till rising of the Court and it was stated that the Advocate General of the State of Chhattisgarh Shri Ravindra Shrivastava and the Advocate General of the State of M.P. Shri V.K.Tankha would address on behalf of their respective States. Shri Murthy, learned counsel for the Union of India was given time to seek definite instructions from the Director (S.R.) concerned on the questions raised especially regarding consideration of the representations and the matter were directed to be listed for hearing on 24-4-2003, therefore, batch of these cases have been listed accordingly. Arguments have been heard at extentio. 15. Shri Ravindra Shrivastava, learned Advocate General of the State of Chhattisgarh and Shri V.K. Tankha, learned Advocate General of the State of M.P. submitted that so far as the allocation under the provisions of the M.P. Reorganisation Act 2000 is concerned, the power is vested with the Central	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Govt. and the role of the respective State governments is to aid and assist the Central Govt. and provide the requisite information. It is submitted that they have done so and would do so as and when required by the Central Govt. or as directed by this Court.

16. So far as provisions relating to services are concerned, sections 68, 69, 70, 71 and 72 are relevant and quoted below:-

> "68. Provisions relating to services in Madhya Pradesh and Chhattisgarh-(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Madhya Praesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Madhya Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Chhattisgarh:
> Provided that no direction shall be issued under this section after the expiry of one year from the appointed day.
> (2) As soon as may be after the appointed day, the Central Govt. Shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such

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(3) Every person who is finally allotted under the provisions of sub-section (2) to a successor State shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.

69.Provisions relating to other services-(1) Nothing in this section or section 68 shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State :

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Madhya Pradesh or to the State of Chhattisgarh under Section 68 shall not be varied to his disadvantage except with the previous of the Central Government.

(2) All services prior to the appointed day rendered by a person- (a) if he is deemed to have been allocated to any State under section 68, shall be deemed to have been rendered in connection with the affairs of that State;

(b) if he is deemed to have been allocated to the Union in connection with the administration of the Chhattisgarh shall be deemed to have been rendered in connection with the affairs of the Union,

for the purposes of the rules regulating his conditions of service.

(3) The provisions of Section 68, shall not apply in relation to members of any All India Service.

70. Provisions as to continuance of officers in same post- (1) Every person who, immediately before the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

appointed day is holding or discharging duties of any post or office in connection with the affairs of the existing State of Madhya Pradesh in any area which on that day falls within any of the successor States shall continue to hold the same post or office in that successor State, and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or any other appropriate authority in, that successor State :

Provided that nothing in this Section shall be deemed to prevent a competent authority, on and from the appointed day, from passing in relation to such person any order affecting the continuance in such post or office.

71. Advisory Committees- The Central Government may, by order establish one or more Advisory Committees for the purpose of assisting it in regard to-

(a) the discharge of any of its functions under this Part; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Part and the proper consideration of any representations made by such persons.

72. Power of Central Government to give directions- The Central Government may, give such directions to the State Government of Madhya Pradesh and the State Government of Chhattisgarh as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Government shall comply with such directions."

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	17. It is submitted by Shri Murthy that there was process of bifurcation of the State of M.P., therefore, the policy guidelines were framed separate vide Annexures-R/1, R/2 and R/5. State of Chhattisgarh came into existence on 1/11/2000. The Government of India in exercise of powers conferred under Section 71 of the M.P. Reorganization Act, 2000 constituted a committee by order dated January 1, 2001 under Chairmanship of Shri N.B. Lohani with other members, which is popularly known as Lohani Committee. It is further submitted that matters of allocation of about 1,62,461 employees of 91 departments were dealt with. First provisional allocations were made. In the said provisional allocation, certain names could not find place. Then the Central Government decided to introduce a tentative final allocation list, covering all personnel and tentatively informing them of their proposed allocation to one or the other successor State and inviting representations from them	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	against the same. Therefore, 8692 aggrieved personnel made the representations before the State Advisory Committee. These representations were examined by the concerned department and they were forwarded to the committee for consideration and 4014 representations were accepted and the claims of about 4678 were rejected. The Central Government considered the request of State Advisory Committee and decided to allocate 219 excess optees, whose representations were received to the successor State of Chhattisgarh, in lieu of M.P. as recommended by the said committee. It is further submitted that in addition to above 219 excess optees, 43 additional cases were considered by the Central Government. It is also submitted that the Central Government has done its best under the circumstances and there is no prejudice against any person. 18. Shri Murthy, appearing for the Union of India fairly stated and submitted that if the representations are	

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submitted duly supported by documents and copy of the petitions and annexures filed, the Central Government would consider the same afresh. It is submitted that the Policy which has been framed is after due consideration and the representations will be decided in accordance with the provisions of law and the policies framed.

19. It is contended that fair and equitable treatment envisages a decision, which is fair and equitable to all. Reliance has been placed on a decision of the Hon'ble Apex Court in the case of State of Maharashtra vs. Chandrakant, reported in AIR 1981 SC 1990.

20. It is pertinent to note that Section 71 of the M.P. Reorganization Act 2000 casts a duty on Central Government enshrined under the said Act. What is ensured is fair and equitable treatment to all persons affected by the provisions of Part VIII and the proper consideration of any representations made by such person. It is for the Central

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Government to ensure fair and equitable treatment to all persons affected by the relevant provisions of the part VIII of the M.P. Reorganization Act 2000 and the proper consideration of any representations made by such persons. Under the facts and circumstances this court would like to observe that power of Central Government is not exhausted merely by laying down criteria for final allotment but continues till entire process is completed, all problems, doubts resolved and all representations considered.

21. Having thus considered the facts and circumstances of the case and in view of the statements made by the counsel on behalf of the parties, in the opinion of this Court, ends of justice will be served if an opportunity is given to the petitioners, those who desire, to make a detailed representation raising their grievances along with documents on or before 10th May 2003 to the Central Government addressed to the Government of India, Department of

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Personal and Training, Ministry of Personal, Public Grievances and Pensions, Loknayak Bhawan, Khan Market, New Delhi (State Reorganization Cell). Same copy of the representation duly supported by all documents be also served on the concerned Departments of both the States after obtaining the acknowledgement and both the States to forward the same to the Central Government with their comments and the requisite information and complete details within 30 days, in order to enable the Central Government to decide the representation. It is open to the Central Govt. to seek such further information from the State Governments and on such requisition being made from the Central Government; the State Governments will supply the same expeditiously. On such a representation being made, the Central Government shall consider and decide the same as early as possible preferably on or before 31st July, 2003 by passing appropriate orders.	

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	22. So far as the cases of revised options are concerned, the petitioners of those cases are directed to specifically mention this fact in the representation. Their representations shall be decided by the Central Govt. as directed above. It is also made clear that all the petitioners/employees will remain on duty on 1/8/2003 to receive the decision of the Central Government on their representations. 23. Counsel for the petitioners submitted that pursuant to interims orders passed by this Court, they have not been relieved and they are continuing. This statement is made at the Bar by the counsel for the petitioners and this is recorded. Counsel for the State submitted that they could not verify about the individual cases and the statement made at the Bar may be recorded. If in some cases or the other, it is found that the petitioners have made incorrect statement, they may be given liberty to make a mention by filing application for modification. The statements are recorded and	

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश इस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the liberty is given to the State, as prayed. Relying on the statements made, it is directed that if the persons are not relieved they shall not be relieved. In the circumstances, it is directed that till the decision is given by the Central Government, the petitioners who have not been relieved and still continuing, shall be allowed to continue. So far those who have been relieved are concerned, they should mention this fact in their representation and it is for the Central Government to pass such order which the Central Government deems fit. It is made clear that the decision on the representation would be communicated to the concerned departments, who after receiving it would communicate it to the employees concerned. The directions are being issued to the respective departments so that the decision taken is served on the petitioners.

24. In the opinion of this Court, it is in the interest of the employees as well as the respective Governments that the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200 .....

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	orders are implemented, allocations are finalized and the persons start working, so that entire matter is finalized at the earliest and the respective personnel should devote time in performing their duties instead of litigating. 25. It is made clear that this Court has considered the matter on broad consensus arrived at between the parties and has not expressed any opinion on the merits or otherwise of the case and it is left for consideration of the Central Government. 26. With these observations, these petitions are disposed of finally. 27. Consequently, M.W.P.s & I.A.s, if any, stand disposed of. 28. Before parting, this Court appreciates the valuable assistance rendered by counsel for the petitioners, Shri Ravindra Shrivastava, Advocate General of State of C.G and his colleagues, and Shri V.K. Tanka, Advocate General of M.P.	

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आदेश पत्रक

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मामला क्रमांक ..... **सन्** 200

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	and his colleagues, Shri V.V.S. Murthy, Addl. Standing Counsel for Union of India, all of whom assisted the Court in arriving broad consensus in a matter like this. Certified copy to the petitioners/their counsel after incorporation of the amendment etc. if directed earlier. Copy to State counsel of both the States & counsel for Union of India free of cost for forwarding it to respective Governments for compliance. **Sd/-** **Fakhruddin** **Judge**	

[पीछे देखिये